



ORDINANCE REVIEW COMMITTEE

Members

Councilor John Thorpe, Chair
Megan Paik, Citizen, Vice-Chair
Councilor Marianne LaBarge
Councilor Jim Nash
Jeff Napolitano, Citizen

MEETING MINUTES

Date: January 11, 2021, Time: 5:30 p.m.
Virtual Meeting

1. **MEETING CALLED TO ORDER/ROLL CALL:** At 5:32 p.m., Councilor Thorpe called the meeting to order. On a roll call, the following members were present: Councilor John Thorpe, Councilor James Nash, Councilor Marianne LaBarge, Member Jeff Napolitano and Member Megan Paik. Also present were City Solicitor Alan Seewald and Administrative Assistant Laura Krutzler.
2. **ANNOUNCEMENT OF AUDIO/VIDEO RECORDING**
Councilor Thorpe announced that the meeting was being audio/video recorded.
3. **PUBLIC COMMENT**
There being no public comment, Councilor Thorpe moved to the next item on the agenda.
4. **APPROVAL OF MINUTES OF DECEMBER 15, 2020**
Councilor LaBarge moved to approve the minutes of December 15, 2020. Member Nash seconded.

Councilor Nash requested that approval be postponed until the next meeting since he didn't have a chance to adequately review the minutes. Member Paik reviewed a few minor corrections.

Councilor LaBarge withdrew her motion to approve and Councilor Nash withdrew his second.

Councilor Thorpe moved to defer approval to the next meeting. Councilor LaBarge seconded. The motion passed unanimously 5:0 by roll call vote.
5. **FORMAT/STRUCTURE OF EXECUTIVE SUMMARY**
Prior to the meeting, Member Paik circulated a rough draft of an executive summary for the committee's final report (see attachment to master version of the minutes.) Members individually offered thanks and positive feedback on its content and organization.

Attorney Seewald said he didn't get a lot of time to review it in detail but said it gives a good 30,000-foot overview of the committee's process. The devil is going to be in the details of their analysis and recommendations to the City Council and the Mayor. He might want to change a few words, like the word 'harmful' and clearly indicate that the resolution came from the City Council.

Member Paik said she mentioned policy areas that they haven't broached yet because they haven't had the opportunity. They have talked a lot about zoning, rental housing, parking and nuisance laws, but the National League of Cities identified other areas such as purchasing, hiring, recreation and ownership. She said she didn't know how other members felt about working in those areas. They haven't had any recommendations come across the transom in those areas.

He had a conversation with the chair after the last meeting and suggested that if the committee is going to get into depth in any of these areas, they should start limiting the areas they decide to focus on, Attorney Seewald reported. "It's a big bite to chew," he observed.

Intergenerational wealth inequality and unequal educational opportunity are all legitimate concerns but he doesn't know that they are reflected in any way in the city's ordinances. It is a question of how deeply into any of these areas the committee wants to go. They are halfway through January and essentially have six weeks to study these things and get a report written and filed.

Clearly, it was just a laundry list of things that came to mind with the term, "systemic racism." Member Paik responded. But they need to justify in the report why they narrow the focus to certain topics and not others. A lot of it is that they are limited by the six months of their existence. It also could simply be that other subjects have not been raised by the public, department heads or councilors.

She asked if other members had strong feelings about whether to go for breadth or depth.

Councilor Nash said he really appreciates her bringing these ideas to the table. He thinks some have more to do with initiatives than with actual laws. Laws are more about barriers and what is allowed and not allowed whereas there are programs and initiatives the city can take on to open up more opportunity. He thinks they are going to come up with a list of things at the end of their work that they would like the city to keep looking into and pursuing.

Regarding land ownership, he knows the planning department is about to move forward with a number of zoning recommendations to address affordable housing. Right now, they are tied into the state in terms of creating overlay districts for affordable housing but a new ordinance proposes creating a local process to encourage affordable housing. Also, on Thursday night, is public hearing is being held on a new proposal to allow two-families by right in all residential zoning districts.

As far as recreation, over the summer, there was a lot of tension over people accessing the city's waterways, and the planning department held some meetings over the winter to discuss the best approach. The DPW is looking at ways to accommodate parking and to identify where it can safely occur. In a lot of ways, these discussions are already happening. He thinks what's important is for them all to keep saying, "All right, we've done that, what's the next thing we can do?" There's a lot of ongoing work to be done here.

He pointed to recent work to update the charter to allow residents who are non-citizens to vote in local elections. "There's a host of things the city is working on at many levels," he pointed out.

He thinks it would be helpful as they are ticking these things off to say, 'there's an idea we can toss to the planning department or maybe even the school committee.' As they discuss how to bring social justice to bear on the way the city does business, he is increasingly surprised to find the things they are already doing. "There's a lot of momentum," he noted.

Member Napolitano said he just read Member Paik's draft and is most interested in the stuff encompassed in the last couple of paragraphs. He has been thinking about this. In terms of their buckets of content, the first is pretty uncontroversial. The issue for him is whether to focus on something ameliorative vs. something that's forward-looking. He has had some conversations about what is possible within the scope of reviewing the ordinances and implementing new ones and has been asking himself what they can do to not simply address problems but to be progressive. The topics she identified are the things he's most interested in talking about and trying to brainstorm around what's possible.

Regarding Councilor Nash's allusion to things such as access to waterways, he wants to make sure they are staying on ordinances because some of this isn't really something that can be done by ordinance, Attorney Seewald reminded. There are a lot of civil, contractual relationships that cities and towns cannot legislate. While all of these concerns are valid, he wants to keep shepherding them back to the ordinances and make sure they're focusing on what can be done by ordinance. A lot of what happens in the city happens on the executive side. When it comes to land use, certainly those are ordinances.

As an example, a proposal came up for an ordinance to prohibit rental brokers from charging tenants a commission and to instead charge the landlord. They can't do that. Those are civil relationships, contractual relationships that they don't have the authority to regulate. He does believe they have authority to include things in the Notice to Quit. He wanted to caution them about the limits of legislation on the local level.

Member Napolitano asked the city solicitor to elaborate on the general delineation of what can be accomplished by ordinance.

Prior to 1964, Northampton was a 'limited home rule jurisdiction' meaning they could only legislate in areas the state legislature gave them specific permission to legislate in, Attorney Seewald explained. In 1964 there was a constitutional amendment. The home rule amendment passed and they now have the authority to legislate in any area that is not occupied by the state and does not alter civil relationships. If there are comprehensive state regulations in an area of law, municipalities cannot legislate there. Wendell tried to pass its own pesticide law and the legislature said, "No, that's a comprehensive state legislative scheme, you can't legislate in that area."

The home rule amendment had a list of areas cities and towns can't legislate in; for example, they can't have their own tax laws. One of the areas that is prohibited are ordinances that alter civil relationships. A contract between a broker and a landlord is a civil relationship and local legislation cannot alter that. It is a fundamental limitation on the ability of city and towns to legislate vis-à-vis the sovereign authority of the state. The same analysis happens between the state and federal government. The states can't legislate in areas the federal government has occupied completely.

Another factor is that Northampton has a charter that is a strong mayoral form of government, meaning the city council can never exercise an executive function, and the mayor as the executive can never act as a legislator. All control over city departments is vested with the mayor. Policies on how departments carry out

their function is left to the mayor. City council can make general policy in some areas but the mayor carries it out.

State law gives the city council the authority to set fees, but M.G.L. Chapter 40, Section 22F stipulates that, if accepted, each department can set its own fees. Once accepted, this shifted all power over to the executive branch. Only the departments with the approval of the mayor can decide what the fees are.

Member Napolitano asked the definition of a civil relationship.

That's a good question, Attorney Seewald responded. There is no definition. It's one of these, 'I know it when I see it.'

Councilor Nash asked if they should come up with a definition.

No, the Supreme Judicial Court (SJC) decides what those civil relationships are.

Member Paik asked if it is possible to encapsulate some of what he said in their report. She feels like there's a kind of universal misunderstanding of their role and their purview and maybe even ambiguity as to the meaning of the word 'ordinance.'

An ordinance is a legislative act passed by the city council and approved by the mayor, Attorney Seewald clarified.

In the months they have been meeting, they have discussed many ideas that are policy adjacent without regard to whether they would be executive actions, resolutions or ordinances, Member Paik noted. She doesn't think they should be overly ambitious and try to take on systemic racism with their work or in this report. If they are to narrow their focus she thinks they need to rationalize and explain it to their audience. As an advisory body, she expressed her understanding that they are reporting to both the mayor and city council.

To cite a specific example, when they talk about intergenerational wealth, they need to think about whether there is any room for ordinances to affect that, Attorney Seewald elaborated. Intergenerational wealth is a function of intestacy statutes. Wills are wills; they are a civil relationship between generations based on common law and statutes that have been around forever. There is nothing they can do to prevent somebody from passing wealth to the next generation.

Member Paik said she understands if he feels like terms like that should be struck from the report for the sake of clarity. But she thinks the city does recognize that intergenerational equity is important. Initiatives of the city are said to be based on different types of equity such as distributional equity, structural equity, procedural equity and intergenerational equity. Personally, she doesn't think it is harmful to raise this issue because part of what they are doing with this report is general education.

That's where he differs; they're reviewing ordinances, Attorney Seewald stressed. It is not just a free-roaming committee to identify social injustice. "This is an ordinance review committee; we're reviewing ordinances."

As far as intergenerational wealth or unequal educational opportunities; he doesn't know of any ordinances inhibiting equal access to education.

They're not going to be able to find or create ordinances that address any of these causes, Member Paik acknowledged. But on a much broader level, zoning changes could affect where people choose to live and where their children go to school.

Talking about *systemic racism* here is not a "free-roaming" exercise to identify social injustice. We should keep in mind that the charge of our Ordinance Review Committee of 2020 was formed out of an amendment to a Council resolution with those words in the title (**20.108 A Resolution in Support of Actions to Combat the Public Health Crisis of Systemic Racism**). She stated this in the fourth paragraph of the draft executive summary of the committee's report. In the following paragraph, she had written, "Although laws are written to be impartial, they may have disparate impacts on marginalized populations. Structural causes of *systemic racism* may include, but are not limited to, residential segregation, intergenerational wealth inequality, unequal educational opportunities, barriers to civic participation, implicit biases, and discrimination." That is the antecedent to the mentions of "intergenerational wealth inequity" that arised in our discussion today.

Additionally, community education about ordinances and their contexts may not be a direct objective of ours, but it is an important indirect objective. Like everything we do, our report is for public consumption.

[There was a brief interruption as Member Paik adjusted her volume as she had become inaudible.]

It sounds to her like Attorney Seewald wants to keep their report very narrow and very tight and doesn't really want to explore what she thought he had termed the philosophical background for public policy.

Attorney Seewald said he has no problem with philosophy or background, he just wants to keep them moored to the ordinances and to what can be done through ordinances. He thinks when councilors get on the council some are surprised at how little is actually done by ordinance. This was a problem in the charter review also; he kept having to stop them and ask what something had to do with the charter. He just wants to know what it has to do with ordinances and the limitations on legislative authority in the city and not just a philosophical rendering of societal ills in Northampton. There's a lot more to be done than can be done by ordinances, and a lot will be done by policies within the departments, he noted.

Member Paik said she thinks there's not necessarily recognition that these are all societal ills or that they all affect Northampton residents, and she feels that needs to be pointed out in their report. They certainly don't need to go into depth. She thinks most people will be fine with just a cursory mention. She has no doubt that most of the report will be about much more specific ordinances or ordinance-adjacent ideas that have come to them in their meetings from the public. She agrees with Member Napolitano that they should take more of a critical look at existing ordinances and be more concerned about their implications rather than their intent because the intent is never harmful yet they know the status quo isn't serving many people of the city.

Member Napolitano said he understands having to ground issues they see as discrimination or unfair advantages in basic rules. But he would say housing and landlord/tenant issues is a fairly occupied civil relationship at the state level, yet in Boston and Somerville they have passed ordinances requiring

landlords to inform tenants of legal and financial resources. He asked why that is permissible while something such as setting the minimum wage in Northampton is not.

He hasn't specifically studied minimum wage but he would think that is a fairly occupied field where the state has legislated what the minimum wage will be, Attorney Seewald responded. None of this is black and white, he observed. He can see where an employer/employee relationship could be deemed a civil relationship between two contracting parties. He hasn't studied that specifically, but he thinks it would be problematic. He has been in contact with counsel in both communities after they talked about it; what they said is, 'we think we can do this but it hasn't been challenged.'

He talked to Bill Newman and, initially, he said you can't do that, then they talked it through and he said, maybe it's a consumer protection law. Certainly the state by statute has not prohibited cities and towns from doing it. The question is, is the state statute occupying the field. City solicitors out east don't know the answer to that question, but they're willing to roll the dice. He doesn't have a problem taking risks; the real reason he called Bill was because he was afraid there was forced speech, requiring landlords to speak against their interests. Bill is his 'go to' guy for 1st amendment issues. The first things he said was no, you can't do that, that field is occupied by state law. He now has four lawyers and they all have different opinions.

They can't invade intergenerational transfer of wealth, they can't invade basic contract law and they can't invade basic tort law, he asserted. He thinks they can require notification to tenants. He would certainly not recommend against passing something like this even if it's struck down. What he wouldn't recommend is violating someone's rights and incurring attendant damages.

He is not trying to unduly inhibit their progress but he does want them to keep their focus on the ordinances. They've been talking about zoning and parking fines and things that are in the ordinances mostly. This is the first time the ordinances have been reviewed for anything other than very concrete issues. They reviewed the ordinances in the past for consistency with the charter but it was a very mechanical approach, not a philosophical approach.

And certainly if that was the case, she wouldn't be here, Member Paik pointed out. The mayor specifically said he needed to appoint someone from the Human Rights Commission to shed perspective on their work. She does feel a sense of responsibility to educate the public, she continued. The report they produce is for public consumption. They need to address some of the misconceptions and define what they're talking about. If they could shed light on the limitations of how ordinances interact with state statutes, that would be helpful, she suggested.

Going back to the fact that they do need to cover more than just the technical review of ordinances in their report, **in simply mentioning some structural causes of systemic racism**, she doesn't necessarily think people expect them to have done something about it in the six months of their existence. They are simply stating their values.

Attorney Seewald suggested that perhaps this could be addressed by explaining in the report why it is that these things cannot be dealt with in the report; that they would hope that these are addressed in any other way that they can be addressed, including by resolutions, executive orders, departmental orders, etc.

The reason he cautioned them is that there isn't a lot of time. If they really want to get into the ordinances that can be changed or created to ameliorate some of the societal ills they have been identifying, he is trying to corral them back into that focus. He is happy to try to draft something that explains why they aren't addressing intergenerational wealth and property transfers; in short, they can't. "We call upon the legislature, we call upon the mayor, we call upon the departments to address these." That's what he thinks the charter is intending by calling for ordinance review periodically.

Councilor LaBarge thanked Attorney Seewald, saying he's explained it the best that he could. The mayor has the power and city council can help design ordinances, she confirmed. Regarding his earlier statement that the city council gave authority to set fines to departments, she asked if councilors could change that.

The general rule is that, once a city or town accepts a statute, unless there is a provision in the statute itself to unaccept it, it would need a legislative act to unaccept.

Councilor LaBarge agreed with Member Paik that the cost of housing is a serious problem in the city. She referred to former Mayor Mary Clare Higgins proposing rent control at one point.

The state has banned cities and towns from imposing rent control, Attorney Seewald advised. He was town counsel in Amherst when that was passed because Amherst had rental regulation and it got struck down.

During the budget hearing, people asked about controlling rent, Councilor LaBarge commented. It's a big problem here and she can see the concern of people living in the city. She encouraged Member Paik to tune into the Planning Board meeting Thursday night to hear what is being proposed to change the zoning ordinance.

"Our hands are tied here right now," she lamented.

Going along with Councilor LaBarge's question, Councilor Nash asked about the administrative fee assessed by the police department when a car is towed. The bulk of the cost is related to towing and storage fees, but how could the committee speak to that? He asked. Could they come up with a recommendation that they would like to see the fee dropped?

"You can pass a resolution on any issue that you want to," Attorney Seewald reminded. They could pass a resolution calling on the mayor to eliminate that fee or reduce the fee. It could be that they identify this particular fee as one that is disproportionately impacting marginalized communities, recognizing that under 22F they don't have the authority to look at this but calling on the mayor to reduce that fee. Any of these areas could be addressed through a resolution to the legislature, he pointed out. It's important that the city council do this because it builds momentum to have different communities petition the legislature.

Councilor Nash asked if they could include a recommendation like that in their report.

"You can include anything you want in your report," Attorney Seewald said. He is trying to impress upon them that this is an ordinance review, he reiterated.

Councilor Thorpe expressed his understanding that the housing stability notification ordinance proposed by the Northampton Housing Partnership is something they could recommend in their report and address in bucket #3.

One of the communities requires the notice to be copied to the city, Attorney Seewald noted. He and Bill Newman discussed what happens in court if that isn't done. He is not sure a court is going to stop proceeding with an eviction because a pamphlet the city requires isn't included. He has his doubts.

The original draft established a \$500 penalty if the landlord failed to provide the information, Member Paik said.

In the bulk of their report they will focus on existing ordinances and ordinances at least in the state of the **Housing Stability Notification Act**, Member Paik stated.

Attorney Seewald said his suggestion is that they recommend that an ordinance be drafted rather than drafting it themselves.

Member Napolitano said he thought they would want to articulate important parts to include, and Attorney Seewald agreed.

There were a number of other zoning ordinances and she doesn't feel they applied a very critical lens to any of those, Member Paik said.

BARRIERS TO CIVIC PARTICIPATION

Moving beyond intergenerational wealth **inequality** and unequal educational **opportunities**, Member Paik wondered if the committee is interested in talking about barriers to civic participation, another **structural** cause of systemic racism. **This was also in the Charter Review Committee's report as a "Topic of Further Study."** She said she wasn't sure if there are ordinances related to that.

Regarding barriers to civic participation, Councilor Nash pointed out that they are currently allowed to meet remotely by order of the governor. He feels participation from the public has gone way up with this barrier removed. He thinks it would be good to allow remote participation for meetings. He knew they were dabbling with it before COVID. He thinks the doors this has opened have been really terrific. At the same time, while it has allowed into the room people with access to technology, it has left a lot of people behind. He thinks something around remote participation would be really cool.

The Open Meeting Law (OML) requires a corporal convening of the members, Attorney Seewald reminded. That has been suspended during COVID. It is state law and they don't have the authority to change it. They could call upon the governor and state legislature to change the OML. But until they eliminate the requirement of corporal convening, there is nothing they can do.

Councilor Nash expressed his understanding that he is speaking about the body itself convening in one room. What about remote participation for the public? He asked.

Attorney Seewald said he doesn't see why that couldn't be done.

She hears what he is saying but she interpreted it differently, Member Paik said. Just enabling technological access to more people is not necessarily insuring civic participation, she noted. She thinks civic participation should be really about having people in positions and racial diversity of people with influence and discretion to make decisions. That's not happening right now in the city. It's not lost on her that she's one of

very few BIPOC residents who has any sort of interaction with city officials on a regular basis. She knows the barriers she encountered to be present at and to even participate in these meetings as an audience member. She would like to talk about what they can do to really diversify the people that are here on the screen; in council and in city administration. She doesn't know if that's something they can do through ordinances or if it is something they could just raise **as an issue** in the report. She doesn't even know if other members agree that such barriers exist.

He was speaking to public participation and opening the doors to everybody to be involved, Councilor Nash clarified. The 'Black Lives Matter' and 'Defund the Police' people who participated in the budget process – some of them would have been in the room but 500 people would not have been in the room in council chambers. He's always interested in new ways of getting people into the room because that's where they start building the relationships and the skills to take on responsibility. He ended up in this role by just starting to attend meetings. Opening up the doors and just getting more people into the room to him is a foundation. He is not disagreeing with her, he assured. The number one thing to him is getting people in the door and effectively feeling part of the process.

It takes an inordinate amount of privilege, time, **connections** and personal initiative for her to even be here on this committee right now, and **[these barriers]** are something a lot of folks can't overcome, Member Paik shared. It is incumbent on them to lower those barriers.

Councilor LaBarge said she finds a lot of value in being in council chambers and getting to know people. On Zoom you cannot do this. She feels the open public session in council chambers shows transparency. She doesn't really like zooming all the time. She heard from a lot of people about rotating public meetings at JFK Middle School and council chambers and she thinks that is a good idea. She said she appreciates the importance of face-to-face participation.

Member Napolitano said he sent a link of a document to the administrative assistant with a list of barriers **to participation**. The question is whether the barriers are put up by existing ordinances or if they could be overcome by **new or altering** ordinances. **As someone whose job involved attending City Council meetings, he probably would not have been able to take that time to do so otherwise. Ordinary folks without a lot of privilege would have more barriers.** Mrs. Krutzler screen-shared pg. 12 (Barriers to Participation) from "Re-Energizing Democracy Recommendations" the 2016 report prepared by the Pioneer Valley Planning Commission on behalf of the Department of Planning and Sustainability, Northampton, MA.

Member Napolitano said there is a question in his mind as to whether elected officials could actually materially improve the circumstances of people's lives even if they had full control of municipal powers. "Even if we abolish the city council and the mayor and made a king of Northampton who's able to do whatever a municipality is allowed to do, could we actually materially improve people's lives, could we address the discrepancies that marginalized communities experience?" he wondered aloud.

In terms of access to city government, he thinks remote access should at least be on the table as a recommendation. It is definitely an improvement in terms of not physically having to go to every single meeting.

She has heard these barriers come up in terms of running for office or volunteering for the city, Member Paik noted. As they know, three out of the four black and brown women have resigned from the Northampton Policing Review Commission (NPRC). These challenges are way more acute for people of color.

Councilor LaBarge mentioned the importance of making childcare available.

They don't need an ordinance for that, Attorney Seewald pointed out. The city council could put it in their rules.

Member Paik mentioned that the Charter Review Commission report has topics for further study. They could have a similar section for topics that can't be addressed through specific ordinances.

6. DISCUSS CONTENTS OF BUCKET #3

They have been discussing this to some extent, Councilor Thorpe said. They need to figure out what they want to address in this bucket.

Member Paik expressed the opinion that the **Housing Stability Notification Act** certainly belongs in this bucket. She also mentioned zoning ordinances. Councilor Thorpe noted that OPS Director Wayne Feiden came and spoke to them about the two-family by right housing proposal. He expressed the opinion it also belongs in bucket #3.

Attorney Seewald asked if the committee was making a recommendation to the council to adopt this proposal. He pointed out it would probably be enacted by the time this gets out.

They sent two things to the Planning Board to discuss, expanded notification under Section 350-3.5 and asking the Planning Board to look at how parking regulations impact people who rent, Councilor Nash reminded. He said he thought both of these proposals fall into this category.

Zoning notification is going to be an ordinance; it's not going to be an executive order, Attorney Seewald confirmed.

Councilor Nash expressed his understanding that notification could be proposed by the mayor similar to the policy of posting orange signs on properties to notify the public of upcoming hearings.

Attorney Seewald said he believes the practice of posting orange signs was adopted voluntarily by the planning department. Mandating notice to abutters in addition to what is required by statute would need to be done by ordinance, he said.

Councilor LaBarge said she sent an email to the administrative assistant, city solicitor, Councilor Thorpe and Councilor Nash today. She would like to have the Ordinance Review Committee look at the ordinance having to do with local handicapped permits.

Councilor Thorpe said he was planning to put that on the next agenda so it could be discussed.

(Member Paik left the meeting.)

If this committee can figure out how to diversify appointed board and committees, [it would be an invaluable service], Attorney Seewald commented. This is an intractable problem, he observed. It has been an issue the whole time he's served on committees.

It has to do with peoples' material conditions, Member Napolitano conjectured.

7. ADJOURN

Member Napolitano moved to adjourn. Councilor LaBarge seconded. The motion passed unanimously 4:0 by roll call vote. The meeting was adjourned at 7:18 p.m.